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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NĀ ‘OHANA O LELE HOUSING) CIVIL NO.
COMMITTEE; AMERICAN CIVIL) (Other Civil Action)
LIBERTIES UNION OF HAWAI‘I; E OLA)
KĀKOU HAWAI‘I; HAWAI‘I) COMPLAINT FOR DECLARATORY
ADVOCATES FOR TRULY) AND QUO WARRANTO RELIEF;
AFFORDABLE HOUSING; SIERRA) ATTACHMENT “A;” SUMMONS
CLUB; and KŪ‘IKEOKALANI)
KAMAKEA-‘ŌHELO,)
)
Plaintiffs,)
)
v.)
)
JOSH GREEN, GOVERNOR OF THE)
STATE OF HAWAI‘I; NANI MEDEIROS;)
and BUILD BEYOND BARRIERS)
WORKING GROUP,)
)
Defendants.)
)

COMPLAINT FOR DECLARATORY AND QUO WARRANTO RELIEF

INTRODUCTION

1. Plaintiffs Nā ‘Ohana o Lele Housing Committee, American Civil Liberties Union of Hawai‘i, E Ola Kākou Hawai‘i, Hawai‘i Advocates for Truly Affordable Housing, Sierra Club, and Kū‘ikeokalani Kamakea-‘Ōhelo (collectively “Plaintiffs”), by and through their

counsel, Earthjustice, hereby seek a judicial declaration that (1) Defendant Governor Josh Green acted *ultra vires* when he issued the July 17, 2023, Proclamation Related to Housing (“Proclamation”), which is Attachment “A” hereto. Specifically, Plaintiffs seek a judicial declaration that the longstanding shortage of affordable housing in Hawai‘i is not a “disaster[] or emergenc[y] ... resulting from natural or human-caused hazards” within the meaning of Hawai‘i Revised Statutes (“HRS”) Chapter 127A. Defendant Green consequently exceeded his statutory and constitutional authority when he circumvented the constitutionally mandated legislative process for addressing public policy issues and issued the Proclamation, which purports to suspend democratically adopted laws governing the approval of housing and infrastructure projects and to impose instead an approval process of Defendant Green’s own creation. Plaintiffs further seek a judicial declaration that Defendant Green unlawfully and unconstitutionally usurped legislative powers when he adopted in the Proclamation “Rules Relating to Project Certification Pursuant to the Governor’s Emergency Proclamation Relating to Housing” (“Certification Rules”) that purport to modify statutory procedures governing housing and infrastructure development that the Hawai‘i State Legislature enacted. In sum, Plaintiffs seek a judicial declaration that the Proclamation is entirely void, unlawful, and unconstitutional.

2. Because the Proclamation is unlawful and unconstitutional, Plaintiffs further seek quo warranto relief to inquire into and challenge the authority of Defendant Nani Medeiros to hold and exercise the powers of State Lead Housing Officer, an office that Defendant Green purported to establish in the Proclamation. Plaintiffs also seek quo warranto relief to inquire into and challenge the authority of the Build Beyond Barriers Working Group (“Working Group”), a deliberative body that Defendant Green purported to establish in the Proclamation and to empower to, among other things, certify housing and infrastructure development, exempting it

from certain state and county laws. Plaintiffs respectfully ask the Court to enter judgment that Defendant Medeiros lacks authority to hold the office of State Lead Housing Officer or exercise its powers, as the office is void and unlawful, and that the Working Group likewise has no authority to exist or exercise powers because it is void and unlawful.

3. Plaintiffs also ask the Court to invalidate any exemptions, certifications, approvals, or other decisions made by the State Lead Housing Officer or the Working Group pursuant to the unlawful and unconstitutional Proclamation and Certification Rules.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-2, 603-21.5, 603-21.7, and 632-1.

5. Venue lies in this judicial circuit under HRS § 603-36(4) and (5) because the conduct giving rise to this action occurred in this circuit and Defendants Green and Medeiros are domiciled in this circuit.

PARTIES

6. Plaintiff NĀ ‘OHANA O LELE HOUSING COMMITTEE (“Nā ‘Ohana”) is a community organization established by Kanaka Maoli (Native Hawaiian) residents of Maui advocating for the protection of traditional and customary practices, natural and cultural resources, and the environment, as well as truly affordable housing for local residents. Nā ‘Ohana’s members reside, work, recreate, and practice their culture in the State of Hawai‘i, and most notably in the region known as Maui Komohana (West Maui). Nā ‘Ohana’s members are tax-paying residents of the State of Hawai‘i and are registered to vote in the state.

7. Nā ‘Ohana’s membership includes descendants of Chief Pi‘ilani, who united the island of Maui under one lineage in the late 1500’s, as well as holders of kuleana land titles. As kupa‘āina (native born) of Maui Komohana, Nā ‘Ohana’s members continue the traditional and customary practices of their Native Hawaiian ancestors, including gathering of traditional foods and medicines and traditional agriculture, such as kalo (taro) cultivation. By exempting projects from laws intended to ensure responsible stewardship of these important cultural and natural resources and to guarantee meaningful opportunities for public input in decision-making, the Proclamation threatens Nā ‘Ohana members’ continued ability to engage in traditional and cultural practices and to pass these practices on to future generations.

8. The protection and caring for iwi kupuna (burials) is a traditional and customary practice of Native Hawaiians passed down from one generation to the next. This practice is of critical importance to Native Hawaiians, including Nā ‘Ohana members, because of the deeply held belief that iwi carry the mana (divine power) of ancestors and connect one to the land of their birth. The Proclamation’s suspension of laws that protect historic properties, and the power the Proclamation purports to grant the State Lead Housing Officer and Working Group to exempt projects from even a truncated historic review process, has and will continue to adversely affect Nā ‘Ohana members’ ability to continue their work protecting and preserving cultural repositories and iwi kupuna and threatens their continued ability to practice their culture.

9. Nā ‘Ohana and its members have been actively engaged in recovery efforts in Lahaina following the tragic wildfires that occurred on August 8, 2023. Nā ‘Ohana and its members are advocating for rebuilding efforts to center the Lahaina community and ensure that Lahaina families are not displaced. Nā ‘Ohana and its members are committed to ensuring that truly affordable housing for local families is constructed in a well-thought out and culturally

appropriate manner, with full public participation, which requires strict compliance with the environmental review, historic preservation, and open government laws the Proclamation purports to suspend.

10. The interests of Nā ‘Ohana and its members in securing water justice, environmental protection, the protection and preservation of iwi kupuna, and sustainable, affordable housing for Maui Komohana residents have been, and will continue to be, adversely affected by the Proclamation, which purports to suspend Hawai‘i state statutes that protect the environment and historic and cultural resources and that mandate open government and meaningful opportunities for community engagement and participation in decision-making.

11. Plaintiff AMERICAN CIVIL LIBERTIES UNION OF HAWAI‘I (“ACLU of Hawai‘i”) is a private, non-partisan, non-profit 501(c)(4) organization that has been protecting the civil rights and civil liberties of the residents of the Hawaiian Islands, Guam, and American Samoa since its inception in 1965. The ACLU of Hawai‘i has over 2,600 active memberships in Hawai‘i, including both individual and joint memberships. ACLU of Hawai‘i members include tax-paying residents of the State of Hawai‘i, who are registered to vote in the state.

12. The mission of the ACLU of Hawai‘i is to ensure that the government does not violate fundamental constitutional rights, and it furthers this mission through lobbying, litigation, and public education. ACLU of Hawai‘i frequently files and participates in lawsuits to protect and advance rights that are protected by the U.S Constitution and Bill of Rights, Hawai‘i State Constitution and Bill of Rights, as well as other civil rights and civil liberties statutes. These rights include many of the provisions that the Proclamation purports to suspend.

13. ACLU of Hawai‘i members’ fundamental right to a constitutional form of government, which requires three co-equal branches and a separation of powers, has been, and

will continue to be, adversely affected by the Proclamation's suspension of democratically adopted laws and fundamental government accountability protections. Additionally, the rights of private citizens, including ACLU of Hawai'i and its members, to enforce these government accountability protections have been, and will continue to be, adversely affected by the Proclamation's unilateral executive suspension of land use, environmental, cultural, and good governance laws, including the state Sunshine law. The normal democratic, legislative process that the ACLU of Hawai'i and its members have tirelessly fought to uphold has considered and then declined to pass several of the specific policies reflected in the Proclamation. The Proclamation's attempted end-run around the democratic process harms, and will continue to harm, the interests of ACLU of Hawai'i and its members in good, constitutional governance.

14. Plaintiff E OLA KĀKOU HAWAI'I is a non-profit community-based organization established by kĀnaka (citizens) of Hawai'i and Kanaka Maoli cultural practitioners, mahi'ai (farmers), lawai'a (fishermen), mea ho'olako (providers), hahai holoholona (hunters), lā'au lapa'au (traditional medicine practitioners), and grassroots community organizers to protect and preserve Kanaka Maoli traditions, customs, and sacred spaces, as well as Hawai'i's unique waiwai (cultural and natural resources). E Ola Kākou Hawai'i members live, work, recreate, and practice their culture in the State of Hawai'i. E Ola Kākou Hawai'i members include tax-paying residents who noho aō (reside) within the State of Hawai'i and are registered to vote in the state.

15. E Ola Kākou Hawai'i's membership includes iwi kupuna kia'i (protectors) who are actively engaged in the protection, repatriation, and reinterment of iwi kupuna and cultural artifacts in the State of Hawai'i. For Kanaka Maoli, including E Ola Kākou Hawai'i's members, the protection of iwi kupuna maintains the mo'okuauhau (genealogical connection) to one's ancestors and kulāiwi (homeland). Iwi possesses the mana of one's ancestors and caring for iwi

kupuna is an important responsibility handed down from generation to generation. The continued ability of E Ola Kākou Hawai‘i’s members to conduct cultural and spiritual protocol is dependent on the ability to protect and preserve iwi kupuna and sacred cultural sites, such as heiau (place of worship), piko, and wai (water), from development that threatens to unearth, destroy, desecrate, pollute, divert, and deplete them.

16. E Ola Kākou Hawai‘i and its members spend tremendous time and resources challenging development projects that threaten to displace iwi kupuna, desecrate cultural sites, and imperil Hawai‘i’s threatened and endangered species. Consistent with the Kanaka Maoli kuleana (responsibility) of mālama ‘āina (caring for the land and its resources), E Ola Kākou Hawai‘i members have testified in agency hearings and filed lawsuits to protect iwi kupuna, sacred cultural spaces, endangered species, and finite freshwater resources. The continued ability of E Ola Kākou Hawai‘i and its members to engage in cultural practice and the kuleana of mālama ‘āina is dependent on the robust protections under Hawai‘i state law that allow for community engagement and participation in public decision-making, including statutory provisions that the Proclamation purports to suspend.

17. The cultural and spiritual interests of E Ola Kākou Hawai‘i and its members in advocating for the protection of important waiwai, such as endangered species, historical artifacts, and iwi kupuna, have been, and will continue to be, adversely affected by the Proclamation’s suspension of key environmental review, historic preservation, and open government laws. By exempting projects from laws intended to protect these important resources and cultural heritage and to guarantee meaningful opportunities for public input in decision-making, the Proclamation also threatens E Ola Kākou Hawai‘i members’ continued ability to

engage in kuleana, cultural and spiritual practices related to the protection of iwi kupuna and cultural artifacts, and the preservation of these waiwai for future generations.

18. Plaintiff HAWAI‘I ADVOCATES FOR TRULY AFFORDABLE HOUSING (“HATAH”) is a community-based organization that advocates for effective, long-term, sustainable solutions to Hawai‘i’s shortage of affordable housing that do not undermine transparent and inclusive decision-making. HATAH’s members are tax-paying residents of the State of Hawai‘i and are registered to vote in the state.

19. HATAH’s membership reflects the experiences of working people struggling to survive in Hawai‘i today. HATAH members include both people whose families have lived in Hawai‘i for multiple generations and relative newcomers. HATAH members are employed in a wide range of jobs including, but not limited to, education and counseling, restaurant service, hospitality, and landscaping. Some HATAH members work multiple jobs just to keep a roof over their families’ heads.

20. HATAH and its members advocate for affordable housing by testifying in support of programs that provide housing assistance, such as the Na Hale O Maui housing program. They also testify against public policies and proposed housing construction projects that serve only to exacerbate housing costs and fail to ensure housing that is affordable in perpetuity.

21. While the Proclamation invokes the need for affordable housing to justify stripping away vital checks and balances on government decision-making, the Proclamation neither requires that any affordable housing actually be built nor provides any guarantees that any housing that the Proclamation authorizes will remain affordable for the working people of Hawai‘i, including HATAH’s members, in the long term. By suspending basic legal procedures for public engagement, transparency, and government oversight, the Proclamation threatens to

promote backroom deals, more luxury housing developments, and profits for developers, rather than address the real needs of working people in Hawai‘i for affordable housing. The Proclamation is harming, and will continue to harm, the interests of HATAH and its members in promoting long-term, sustainable solutions to Hawai‘i’s shortage of affordable housing.

22. Plaintiff SIERRA CLUB is a nationwide, non-profit, membership organization registered to do business in Hawai‘i. The Sierra Club has nearly 3 million members and champions nationwide and more than 4,000 members living throughout the State of Hawai‘i, making it the largest environmental membership organization in the state. Many of Sierra Club’s members are tax-paying residents of the State of Hawai‘i and are registered to vote in the state.

23. Sierra Club and its members have long opposed many of the policies that the Proclamation embodies. Sierra Club has specifically and successfully opposed attempts to limit or eliminate the Hawai‘i Land Use Commission’s oversight of major land use changes, and to broaden exemptions to Hawai‘i’s environmental review law. Sierra Club and its members have also opposed proposals to amend state historic preservation laws in ways that would jeopardize Native Hawaiian historic properties including iwi kupuna and moepū (burial artifacts). Sierra Club and its members regularly rely on the public transparency and input processes embodied in Hawai‘i’s Sunshine Law, HRS chapter 92. Sierra Club has also engaged in community education initiatives to ensure that the public understands how these processes and other mechanisms protect the public’s long-term interests, including meeting with community groups, neighborhood boards, and other organizations to educate the broader public about the wide-ranging concerns and threats to constitutional democracy embodied in the Proclamation.

24. Prior to the Proclamation's issuance, the Sierra Club raised concerns with Defendant Green's administration regarding policies that were ultimately included in the Emergency Proclamation, with Sierra Club's input largely ignored.

25. The Proclamation gives the Sierra Club's executive director a seat on the Build Beyond Barriers Working Group, which the Proclamation tasks with reviewing and certifying certain projects for exemptions. Sierra Club must divert resources from its other, critical work on behalf of its members to try to minimize the damage inflicted by the Working Group pursuant to an illegal process.

26. The interests of Sierra Club and its members have been, and will continue to be, adversely affected by the Proclamation's suspension of key environmental, cultural, and public participation laws and processes. The Proclamation harms Sierra Club and its members' rights to a constitutional form of government. It further harms Sierra Club and its members' rights to a clean and healthful environment, by suspending key environmental review laws enacted to protect human health and the environment.

27. Plaintiff KŪ'IKEOKALANI KAMAKEA-'ŌHELO is a taxpayer, resident, and registered voter of the State of Hawai'i. He is also a cultural practitioner, farmer, and community organizer to promote aloha 'āina.

28. Mr. Kamakea-'Ōhelo currently serves as a Commissioner on the State Land Use Commission ("LUC"), which oversees important land use issues in Hawai'i. Because of his substantial expertise in traditional Hawaiian land usage and knowledge of cultural land practices, he occupies the LUC's Cultural Practitioner At-Large Seat.

29. Mr. Kamaka-'Ōhelo has taken on this kuleana because he is passionate about ensuring that land use decisions are made in a pono and culturally appropriate manner, while also

prioritizing the consideration and protection of cultural, historical, and natural resources for our next generations. As an LUC Commissioner, Mr. Kamakea-‘Ōhelo is tasked with, among other things, considering petitions for district boundary amendments involving land areas greater than fifteen acres but less than 100 acres in agricultural, rural, and urban districts, and determining whether these petitions should be approved, approved with conditions, or denied. His review involves the consideration of multiple criteria under Hawai‘i’s land use laws including, but not limited to, the petition’s conformity to the Hawai‘i State Plan, County General Plan, applicable district standards, and impacts on natural systems or habitats, valued cultural, historical, or natural resources, and agricultural resources. Mr. Kamakea-‘Ōhelo’s interests in ensuring responsible land use planning are harmed by the Emergency Proclamation’s suspension of LUC approvals of redesignation of land up to 100 acres.

30. As a farmer and community organizer with experience in traditional Hawaiian land use management practices, Mr. Kamakea-‘Ōhelo has been actively involved in grassroots advocacy to protect iwi kupuna and ‘āina (land) from inappropriate development that threatens cultural and natural resources and sacred spaces.

31. Mr. Kamakea-‘Ōhelo is actively engaged in the protection, repatriation, and reinterment of cultural repositories and iwi kupuna, which cultural expert Mary Kawena Pūku‘i refers to as our most cherished possession. Mr. Kamakea-‘Ōhelo regularly engages in cultural and spiritual protocol and practices related to the protection of iwi kupuna. The Proclamation’s suspension of historic properties laws, and the power it purports to grant the State Lead Housing Officer and Working Group to exempt projects from even a truncated historic review process, has and will continue to adversely affect Mr. Kamakea-‘Ōhelo’s ability to continue his work

protecting and preserving cultural repositories and iwi kupuna and threatens his continued ability to practice his culture.

32. Defendant JOSH GREEN is the Governor of the State of Hawai‘i. Defendant Green issued the Proclamation that is at issue in this litigation.

33. Defendant NANI MEDEIROS acts as the State Lead Housing Officer, an office that Defendant Green purported to establish in the Proclamation.

34. Defendant BUILD BEYOND BARRIERS WORKING GROUP is a deliberative body that Defendant Green purported to establish in the Proclamation.

LEGAL FRAMEWORK

HRS Chapter 127A, Emergency Management

35. In 2014, the Hawai‘i State Legislature enacted Act 111, which added Chapter 127A (“Emergency Management”) to the Hawai‘i Revised Statutes. The Legislature enacted Chapter 127A because “the State is vulnerable to a wide range of natural and man-made hazards which may result in emergencies or disasters that threaten the life, health, and safety of its people; damage and destroy property; disrupt everyday services, business, and recreational activities; and impede economic development.” 2014 Haw. Sess. Laws Act 111, § 1, at 287-88. The Legislature sought to “bring Hawaii’s emergency management laws into conformity with nationwide practices in emergency management by establishing a Hawaii emergency management agency within the state department of defense and updating and recodifying the authorizing statutes.” *Id.*, § 1, at 288.

36. HRS section 127A-1, which states the chapter’s policy and purpose, reiterates the Legislature’s awareness of “the existing and increasing possibility of *the occurrence of disasters or emergencies* of unprecedented size and destructiveness *resulting from natural or human-*

caused hazards.” HRS § 127A-1(a) (emphasis added). In enacting HRS Chapter 127A, the Legislature sought, among other things, to “confer upon the governor ... the emergency powers necessary to prepare for and respond to [such] emergencies or disasters.” *Id.* § 127A-1(a)(2).

37. As the title of the chapter, “Emergency Management,” indicates, the Legislature intended for the governor to exercise the emergency powers that Chapter 127A confers to respond to specific events that constitute an “emergency” or “disaster” in the commonly understood meaning of those terms, such as fires, floods, and hurricanes.

38. In HRS § 127A-2, the Legislature defined “emergency” to mean an “*occurrence*, or imminent threat thereof, which results or may likely result in substantial injury or harm to the population or substantial damage to or loss of property or substantial damage to or loss of the environment.” (Emphasis added).

39. The Legislature similarly defined “disaster” to mean an “emergency, or imminent threat thereof, which results or may likely result in loss of life, property, or environment and requires, or may require, assistance from other counties, states, the federal government, or from private agencies.” HRS § 127A-2.

40. HRS § 127A-2 defines “hazard” to mean “*an event or condition of the physical environment* that results or may likely result in damage to property, injuries or death to individuals, or damage to the environment that may result in an emergency or disaster.” (Emphasis added).

41. HRS § 127A-2 defines “state of emergency” to mean “*an occurrence* in any part of the State that requires efforts by state government to save lives and protect property, environment, public health, welfare, or safety in the event of an emergency or disaster, or to

reduce the threat of an emergency or disaster, or to supplement the local efforts of the county.” (Emphasis added).

42. HRS § 127A-12(b) authorizes the governor to exercise enumerated “powers pertaining to emergency management.” The Legislature defined “emergency management” to mean “a comprehensive integrated system at all levels of government, and also in the private sector, which develops and maintains an effective capability to prevent, prepare for, respond to, mitigate, and recover from *emergencies* or *disasters*.” *Id.* § 127A-2 (emphasis added).

43. The governor’s “powers pertaining to emergency management” include the power to “[p]rovide for the appointment, employment, training, equipping, and maintaining ... of such agencies, officers, and other persons as the governor deems necessary to carry out the purposes of this chapter.” *Id.* § 127A-13(b)(9). The Legislature further authorized the governor to “[t]ake any and all steps necessary or appropriate to carry out the purposes of this chapter notwithstanding that those powers in section 127A-13(a) may only be exercised during an emergency period.” *Id.* § 127A-12(b)(19).

44. HRS § 127A-14(a) provides that “[t]he governor may declare the existence of a state of emergency in the State by proclamation if the governor finds that *an emergency or disaster has occurred* or that there is imminent danger or threat of an emergency or disaster in any portion of the State.” (Emphasis added).

45. The Legislature provided that, during a declared state of emergency, the governor may wield specified “powers pertaining to emergency management,” HRS § 127A-13(a), including the power to “[s]uspend any law that impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions,” *id.* § 127A-13(a)(3). HRS § 127A-13(a) does not authorize the governor to amend or modify any law.

46. The Legislature did not authorize the governor to exercise the extraordinary powers that HRS section 127A-13 confers to address longstanding issues of public policy. Rather, the Legislature expressly limited the governor’s exercise of those extraordinary powers to respond to an “emergency” or “disaster” as defined in the statute and further provided that the governor may exercise those powers only “during an emergency period.” HRS § 127A-12(b)(19); *see also id.* § 127A-13(a).

47. HRS § 127A-25(a) authorizes the governor to “adopt rules for the State,” including rules that “have the force and effect of law.” The Legislature expressly limited the governor’s rule-making authority to the adoption of only rules that are “[f]or the purpose of carrying out any provision of [Chapter 127A].” *Id.*

The Hawai‘i Constitution

48. Article III, section 1 of the Hawai‘i Constitution provides, in relevant part: “The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives.”

49. Article V, section 5 of the Hawai‘i Constitution provides, in relevant part: “The governor shall be responsible for the faithful execution of the laws.”

50. Article I, section 15 of the Hawai‘i Constitution provides, in relevant part: “The power of suspending ... the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe.”

BACKGROUND

Defendant Green Unlawfully and Unconstitutionally Issued the Proclamation In the Absence of an “Emergency” or “Disaster” within the Meaning of HRS Chapter 127A

51. On July 17, 2023, Defendant Green issued a Proclamation Related to Housing, invoking emergency powers that HRS Chapter 127A confers on the Governor of the State of Hawai‘i.

52. In the Proclamation, the sole basis that Defendant Green identified for invoking Chapter 127A’s emergency powers is that, allegedly, “the current threat to the health, safety, and welfare of the people of the State of Hawai‘i caused by the lack of affordable housing constitutes an emergency under section 127A-14, HRS.”

53. The shortage of affordable housing in Hawai‘i, while an important public policy issue, is neither a “disaster” nor “emergency” as defined in HRS § 127A-2.

54. For purposes of HRS Chapter 127A, to constitute a “disaster” or an “emergency,” there must be an “occurrence, or imminent threat thereof.” HRS § 127A-2.

55. In issuing the Proclamation, Defendant Green did not identify anything related to the housing shortage that has occurred, or threatens to occur imminently, justifying the exercise of extraordinary powers. On the contrary, the Proclamation expressly states that the housing shortage is a longstanding situation, with “the severe shortfall of affordable housing ... recognized as early as 1935,” nearly a century ago.

56. Moreover, in enacting Chapter 127A, the Legislature expressly limited the exercise of emergency powers to responses to “disasters or emergencies ... **resulting from natural or human-caused hazards.**” HRS § 127A-1(a) (emphasis added). For purposes of Chapter 127A, “hazards” are limited to events or conditions of the physical environment. *Id.* § 127A-2.

57. In issuing the Proclamation, Defendant Green did not identify any event or condition of the physical environment that allegedly constitutes a “hazard.”

58. In sum, there is no “emergency” or “disaster” within the meaning of Chapter 127A that authorizes Defendant Green’s issuance of the Proclamation and exercise of emergency powers.

59. Defendant Green and others in his administration worked on the Proclamation for at least six months prior to the Proclamation’s issuance and, during that time, met with over 200 groups and individuals to receive input on the policies to be implemented in the Proclamation. These months of advance policy work are hallmarks of the formulation and adoption of legislation, which the Hawai‘i Constitution reserves to the Legislature, not of a response to the sudden occurrence or threat of “disasters or emergencies of unprecedented size and destructiveness resulting from natural or human-caused hazards,” the proper province of the exercise of emergency powers under HRS Chapter 127A. HRS § 127A-1(a).

The Proclamation Unlawfully and Unconstitutionally Suspends and Modifies Statutes That the Hawai‘i State Legislature Enacted

60. In the Proclamation, Defendant Green invoked the emergency powers conferred by HRS § 127A-13(a)(3) to purport to suspend a host of laws enacted by the Hawai‘i State Legislature, including laws enacted to ensure protection of Native Hawaiian burials, historic properties, the environmental, and open government. Laws that the Proclamation purports to suspend, in whole or in part, include, but are not limited to, HRS Chapter 6E (“Historic Preservation”), Chapter 92 (“Public Agency Meetings and Records,” also known as the “Sunshine Law”), Chapter 205 (“Land Use Commission”), and Chapter 343 (“Environmental Impact Statements”).

61. Among other things, the Proclamation purports to suspend HRS sections 205-3.1(a) and 205-4(a) “to the extent district boundary amendments involving land areas that are greater than fifteen acres but less than one hundred acres in the agricultural, rural, and urban districts are required to be processed by the land use commission.” In the legislative session that ended on May 4, 2023, the Legislature considered and then declined to enact a nearly identical exemption from LUC approval of district boundary amendments. Defendant Green used the Proclamation to impose this failed legislative proposal because he concluded that it is too difficult to pass them legislatively.

62. In the Proclamation, Defendant Green purported to suspend laws “to the extent necessary to expedite the construction, repair, renovation, and occupancy of housing and infrastructure projects certified under this emergency Proclamation.” Those are not “emergency functions” within the meaning of HRS § 127A-13(a)(3).

63. The laws that Defendant Green purported to suspend in the Proclamation do not “impede[] or tend[] to impede or be detrimental to the expeditious and efficient execution of, or to conflict with” any “emergency function” within the meaning of HRS § 127A-13(a)(3).

64. In the Proclamation, Defendant Green invoked the emergency powers conferred by HRS § 127A-25 to adopt “Rules Relating to Project Certification Pursuant to the Governor’s Emergency Proclamation Relating to Housing,” which purport to modify statutory procedures governing housing and infrastructure development that the Hawai‘i State Legislature enacted and to impose instead procedures of Defendant Green’s creation.

65. In the Proclamation, Defendant Green did not identify any provision of Chapter 127A that the Certification Rules purportedly have the purpose of carrying out.

66. The Certification Rules do not carry out any provision of Chapter 127A, which relates to “emergency management,” not to approval of long-term housing and infrastructure projects.

67. While Defendant Green invoked “the lack of affordable housing” as justification for the Proclamation’s issuance, the Proclamation and the Certification Rules do not require the construction, repair, renovation, or occupancy of any affordable housing. To be certified and approved pursuant to the Proclamation and the Certification Rules, projects do not need to create a single additional unit of affordable housing.

Defendant Green Unlawfully Established the Office of State Lead Housing Officer and the Build Beyond Barriers Working Group

68. In the Proclamation, Defendant Green invoked the “emergency management” powers conferred by HRS § 127A-12(b)(9) and (b)(19) to establish the office of State Lead Housing Officer, who, among other things, “shall take appropriate action to support and carry out the intent and purposes” of the Proclamation.

69. In the Proclamation, Defendant Green invoked the same “emergency management” powers to establish the Working Group “[t]o accomplish the expedient development of housing.” The Proclamation provides that the State Lead Housing Officer will assemble and chair the Working Group, which among other things, certifies housing and infrastructure development that may be exempted from certain state and county laws and instead “utilize alternate processes” set forth in the Certification Rules.

70. The Proclamation authorizes the State Lead Housing Officer to “determine that certain state or county projects may proceed under this Proclamation without first being certified by the Build Beyond Barriers Working Group.” The Proclamation broadly defines “[s]tate or

county housing projects” as “housing projects that: 1) utilize state or county land; 2) involve state or county funds; 3) utilize state or county financing; or 4) utilize state or county exemptions or waivers from fees, taxes, zoning, or other restrictions.”

71. Neither the State Lead Housing Officer nor the Working Group serve any function related to “emergency management” within the meaning of Chapter 127A or carry out any purpose of the chapter. Defendant Green therefore lacked authority under HRS § 127A-12(b) to establish the office of State Lead Housing Officer or the Working Group and further lacked the authority to appoint anyone to fill those positions.

FIRST CLAIM FOR RELIEF
(DECLARATORY JUDGMENT – AGAINST DEFENDANT GREEN)

72. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

73. Because there is no “emergency” or “disaster” within the meaning of Chapter 127A that authorized Defendant Green’s exercise of the chapter’s emergency powers, Defendant Green acted *ultra vires* when he (1) declared a state of emergency, (2) issued the Proclamation, (3) suspended laws, (4) established and made appointments to the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, and (5) adopted the Certification Rules.

74. Because there is no “emergency” or “disaster” within the meaning of Chapter 127A that authorized Defendant Green’s exercise of the emergency powers conferred by HRS § 127A-13(a)(3), Defendant Green’s suspension of laws enacted by the Hawai‘i State Legislature violates Article I, section 15 of the Hawai‘i Constitution.

75. Because the laws that the Proclamation purport to suspend do not “impede[] or tend[] to impede or be detrimental to the expeditious and efficient execution of, or to conflict

with” any “emergency function” within the meaning of HRS § 127A-13(a)(3), Defendant Green’s suspension of those laws was *ultra vires* and in violation of Article I, section 15 of the Hawai‘i Constitution.

76. Because the Certification Rules do not carry out any provision of Chapter 127A, which relates to “emergency management,” Defendant Green’s adoption of those rules was *ultra vires* and violated Article III, section 1 of the Hawai‘i Constitution, which vests the “legislative power of the State” in the Hawai‘i State Legislature.

77. Because neither the State Lead Housing Officer nor the Working Group serve any function related to “emergency management” within the meaning of Chapter 127A or carry out any purpose of the chapter, the governor lacked authority under HRS § 127A-12(b) to establish the office of State Lead Housing Officer or the Working Group and further lacked the authority to appoint anyone to fill those positions.

78. An actual controversy exists between Plaintiffs and Defendant Green concerning the lawfulness of Defendant Green’s (1) declaration of a state of emergency, (2) issuance of the Proclamation, (3) suspension of laws, (4) establishment of, and appointments to, the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, and (5) adoption of the Certification Rules.

79. Plaintiffs’ interests in protection of iwi kupuna, historic artifacts and properties, the environment, open government, and a constitutional form of government and in promoting sustainable, responsible housing development are adversely affected by Defendant Green’s unlawful and unconstitutional issuance of the Proclamation, which attempts to circumvent the constitutionally mandated legislative process for addressing public policy issues like housing.

80. There are antagonistic claims between Plaintiffs and Defendant Green regarding whether Defendant Green acted in excess of statutory authorization and unconstitutionally when he (1) declared a state of emergency, (2) issued the Proclamation, (3) suspended laws, (4) established and made appointments to the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, and (5) adopted the Certification Rules. These disputes require a judicial determination.

81. The issuance of a declaratory judgment by this Court will terminate the existing controversy between Plaintiffs and Defendant Green regarding these issues.

82. Plaintiffs are therefore entitled under HRS § 632-1 to a judicial declaration that Defendant Green acted in excess of statutory authorization and unconstitutionally when he (1) declared a state of emergency, (2) issued the Proclamation, (3) suspended laws, (4) established and made appointments to the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, and (5) adopted the Certification Rules.

SECOND CLAIM FOR RELIEF
(DECLARATORY JUDGMENT – AGAINST DEFENDANTS MEDEIROS AND BUILD
BEYOND BARRIERS WORKING GROUP)

83. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

84. Because Defendant Green acted unlawfully and unconstitutionally in issuing the Proclamation and in establishing the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, the office of State Lead Housing Officer and the Build Beyond Barriers Working Group are unlawful.

85. Because Defendant Green acted unlawfully and unconstitutionally in issuing the Proclamation and in establishing the office of State Lead Housing Officer, the appointment of

Defendant Medeiros to that office is unlawful, and Defendant Medeiros has no legal right to perform the duties of that office or exercise its purported authorities.

86. Because Defendant Green acted unlawfully and unconstitutionally in issuing the Proclamation and in establishing the Build Beyond Barriers Working Group, the Working Group has no legal right to perform its duties or exercise its purported authorities.

87. An actual controversy exists between Plaintiffs and Defendants Medeiros and Build Beyond Barriers Working Group concerning (1) the lawfulness of the office of State Lead Housing Officer and the Working Group, (2) whether Defendant Medeiros has the legal right to perform the duties of the State Lead Housing Officer or exercise its purported authorities, and (3) whether the Working Group has the legal right to perform its duties or exercise its purported authorities.

88. Plaintiffs' interests in protection of iwi kupuna, historic artifacts and properties, the environment, open government, and a constitutional form of government and in promoting sustainable, responsible housing development are adversely affected by Defendant Medeiros' and Defendant Build Beyond Barriers Working Group's assertions of authority to perform the duties of the State Lead Housing Officer and Working Group and to approve housing and infrastructure development pursuant to the Proclamation and Certification Rules.

89. There are antagonistic claims between Plaintiffs and Defendants Medeiros and Build Beyond Barriers Working Group regarding whether (1) the office of State Lead Housing Officer and the Build Beyond Barriers Working Group are unlawful, (2) the appointment of Defendant Medeiros to the office of State Lead Housing Officer is unlawful, (3) Defendant Medeiros has no legal right to perform the duties of the office of State Lead Housing Officer or

exercise its purported authorities, and (4) the Working Group has no legal right to perform its duties or exercise its purported authorities. These disputes require a judicial determination.

90. The issuance of a declaratory judgment by this Court will terminate the existing controversy between Plaintiffs and Defendants Medeiros and Build Beyond Barriers Working Group regarding these issues.

91. Plaintiffs are therefore entitled under HRS § 632-1 to a judicial declaration that (1) the office of State Lead Housing Officer and the Build Beyond Barriers Working Group are unlawful, (2) the appointment of Defendant Medeiros to the office of State Lead Housing Officer is unlawful, (3) Defendant Medeiros has no legal right to perform the duties of the office of State Lead Housing Officer or exercise its purported authorities, and (4) the Working Group has no legal right to perform its duties or exercise its purported authorities.

THIRD CLAIM FOR RELIEF
(QUO WARRANTO RELIEF – AGAINST DEFENDANTS MEDEIROS AND BUILD
BEYOND BARRIERS WORKING GROUP)

92. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

93. Because the office of State Lead Housing Officer and the appointment of Defendant Medeiros to that office are unlawful, a writ of *quo warranto* and judgment upon such writ should issue declaring that Defendant Medeiros cannot fill the office of State Lead Housing Officer Commissioner and forbidding Defendant Medeiros to perform the duties of that office or to exercise its purported authorities.

94. Because the Build Beyond Barriers Working Group is unlawful, a writ of *quo warranto* and judgment upon such writ should issue forbidding Defendant Build Beyond Barriers Working Group to perform its duties or to exercise its purported authorities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court:

A. For a declaratory judgment entered in favor of Plaintiffs that Defendant Green acted in excess of statutory authorization and unconstitutionally when he (1) declared a state of emergency, (2) issued the Proclamation, (3) suspended laws, (4) established and made appointments to the office of State Lead Housing Officer and the Build Beyond Barriers Working Group, and (5) adopted the Certification Rules;

B. For a declaratory judgment entered in favor of Plaintiffs that (1) the office of State Lead Housing Officer and the Build Beyond Barriers Working Group are unlawful, (2) the appointment of Defendant Medeiros to the office of State Lead Housing Officer is unlawful, (3) Defendant Medeiros has no legal right to perform the duties of the office of State Lead Housing Officer or exercise its purported authorities, and (4) the Working Group has no legal right to perform its duties or exercise its purported authorities;

C. For a writ of *quo warranto* and judgment upon such writ declaring that Defendant Medeiros cannot fill the office of State Lead Housing Officer Commissioner and forbidding Defendant Medeiros to perform the duties of that office or to exercise its purported authorities.

D. For a writ of *quo warranto* and judgment upon such writ forbidding Defendant Build Beyond Barriers Working Group to perform its duties or to exercise its purported authorities.

E. To void and set aside any exemptions, certifications, approvals, or other decisions made by the State Lead Housing Officer or the Build Beyond Barriers Working Group.

F. For such additional judicial determinations, orders, and relief as may be necessary to implement and effectuate the legislative purpose and intent of HRS Chapter 127A and to implement and effectuate the purpose and intent of the Hawai‘i State Constitution;

G. For an award of the costs of suit herein, including an award of reasonable attorneys’ fees; and

H. For such further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

DATED: Honolulu, Hawai‘i, August 31, 2023 .

EARTHJUSTICE
850 Richards Street, Suite 400
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